

**2006 WARRENTON/FAUQUIER COUNTY
VOLUNTARY ANNEXATION SETTLEMENT AGREEMENT**

THIS VOLUNTARY SETTLEMENT AGREEMENT is made and entered into this _____ day of _____, 2006 by and between the **TOWN OF WARRENTON, VIRGINIA**, A Virginia municipal corporation (hereinafter “the Town”), the **COUNTY OF FAUQUIER**, a political subdivision of the Commonwealth of Virginia (hereinafter “the County”), and **CENTEX HOMES, INC.**, a Nevada General Partnership (collectively referred to herein as the “Parties”).

RECITALS

R-1. WHEREAS, the Parties have reached this Agreement, pursuant to Title 15.2, Chapter 34, of the Code of Virginia, (i) providing for the annexation of certain territory of the County to the Town (ii) providing for the development of the annexation areas in accordance with a jointly approved land use plan, and (iii) providing for the grant of immunity to the County from annexation for a period of \ years, and

R-2. WHEREAS, the Estate of Walter N. Arrington is the owner of a certain tract of land containing approximately \ acres, as the same is more thoroughly identified below, and

R-3. The Town and the County, after due consideration, have determined and agree that their common boundaries should be adjusted and relocated as identified herein, and that certain other matters should be resolved between the Parties, and

R-4. The Parties have determined that this Voluntary Settlement Agreement is necessary to ensure the effective provisions of public services to the area to be adjusted into the Town,

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

SECTION 1. DEFINITIONS The Parties hereto agree that the following words, terms, and abbreviations as used in this Agreement shall have the following defined meanings, unless the context clearly provides otherwise:

1.1. “Annexation Area” means that area to be annexed into the Town of Warrenton pursuant to this Agreement, and further described herein.

1.2. “Centex” means Centex Homes, Inc.

1.3. “County” means the County of Fauquier, Virginia.

1.4. “County Board of Supervisors” means the Board of Supervisors of the County of Fauquier, Virginia.

1.5. “Code” means the Code of Virginia (1950), as amended. A reference to a specific Code provision shall mean that Code provision as it existed on the date of execution of this Agreement or any successor provision should the Code be amended after execution of this agreement.

1.6. “Commission” means the Commission on Local Government.

1.7. “Future Land Use Plan” refers to the written text outlining the future land use for the Annexed Property and on July 9, 2003, and any or all amendments thereto mutually agreed upon by the Town and the County.

1.8. “Non-commercial County territory” refers to any parcel of land in the unincorporated areas of Fauquier County which is not developed for commercial land uses, including [define commercial uses].

1.9. “Section” refers to the parts of this Agreement unless the context indicates that the reference is to sections of the Code.

1.10. “Special Court” means the Special Three-Judge Court appointed by the Supreme Court of Virginia pursuant to Title 15.2, Chapter 30, of the Code.

1.11. “Subsection” refers to the parts of this Agreement set out in the various “Sections.”

1.12. “Town” means the Town of Warrenton, Virginia.

1.13. “Town Council” means the Town Council of the Town of Warrenton, Virginia.

SECTION 2. VOLUNTARY ANNEXATION

2.1. **Annexation Agreement.** The Town and the County agree to the annexation by the Town of certain territory consisting of a portion of that property known as Alwington Farm, more specifically described by metes and bounds on attached **Exhibit A**, and on the map of that portion of Farm hereto attached as **Exhibit B** and shown as Parcel B thereon. **Exhibit C** attached hereto and incorporated herein by reference is a survey showing the Annexation Area (the “Survey”). The Annexation Area is generally described the area generally lying to the southwest of the existing Town boundaries on West Shirley Highway and to the west of the Route 29 By-pass, including approximately \ acres of land, more particularly described in **Exhibit A**.

2.2. **Submission of the Survey.** The Survey shall be submitted to and filed with the Commission and the Special Court appointed to affirm, validate, and give full force and effect to this Agreement.

2.3. **Effective Date of Annexation.** The Annexation provided for herein shall become effective on the first day of the second calendar month after entry of the Order by the Special Three-Judge Court appointed pursuant to Va. Code § 15.2-3400 to affirm, validate and give full force and effect to this Agreement.

2.4. **Extension of Municipal Services.** The Town agrees that, upon the effective date of the Annexation, the Town will extend its municipal services to the Annexation Area and to Parcel C as further set forth herein, on the same basis and at the same level as such services are now or hereafter provided to the areas within its current corporate limits where like conditions exist, provided that Centex shall have identified not less than 90,000 gallons of sewer capacity in the Town's existing public sewer system, through a program of inflow and infiltration remediation, or by reallocation of planned sewer connections within the existing Town boundaries. The Town shall apply connection fee payments made by Centex to the remediation of the identified infiltration and inflow defects.

2.5. **Exclusive jurisdiction in Special Court.** The Town and the County agree that the Special Court will have exclusive jurisdiction to hear any dispute between the Town and the County with respect to the Town's compliance with the provisions of this Subsection and agree that the County and Centex have standing to pursue a declaratory judgment action with the Special Court to enforce the provisions of this Subsection. Centex shall further use its best efforts to identify additional potable and usable water supplies within the Annexation Area. If such supplies are identified, Centex will provide those sources to the Town at no cost to the Town. Public sewer and water services shall also be extended to the homes that may be constructed on Parcel C as further described below.

SECTION 3. LAND USE AND ZONING IN ANNEXATION AREA

3.1. **Future Land Use.** The Parties agree that the orderly development of the Annexation Areas is in the best interest of the Town, the County, and Centex. The Parties have agreed upon the Future Land Use Plan attached hereto as **Exhibit D**. The Future Land Use Plan depicts the land use for the Annexation Area and its immediately surrounding environs that the Parties have agreed is most appropriate. The Town agrees that immediately upon validation of this Agreement by the Special Court it will amend its Comprehensive Plan to incorporate the Future Land Use Plan into its Comprehensive Plan, if it has not already done so. Nothing herein shall be construed to prohibit the Town and County, upon mutual agreement and with the consent of Centex, from repealing, modifying, or amending the Future Land Use Plan provided for herein.

3.2. **Zoning Classification of the Annexed Area.** Centex and the Town Council agree that, upon the effective date of the Annexation, the Annexation Area (Parcel B) shall be deemed classified to the Town's R-10 Zoning District, for the development of the Annexation Area consistently with the Town's R-10 cluster provisions, and that the use and development of the Annexation Area Property shall be subject to the conditions that are set forth in **Appendix A** attached hereto and incorporated herein by reference.

3.3. **Zoning Classifications on those portions of Alwington Farm remaining in the County.** Centex and the County agree that, upon the effective date of the Annexation, that portion of Alwington Farm not annexed into the Town shall be subject to the following conditions.

3.3.1. That portion of Alwington Farm depicted as Parcel A on **Exhibit B** shall remain zoned to the County's RA Zoning District, and shall be subject to a deed restriction that the Parcel A shall be non-common open space as that term is defined in the Fauquier County Zoning Ordinance, and that one residence shall be permitted thereon together with all accessory uses pertaining thereto now or hereafter permitted by the Fauquier County Zoning Ordinance.

3.3.2. That portion of Alwington Farm depicted at Parcel C on **Exhibit B** shall remain zoned to the County's R-1 Zoning District, provided that not fewer than five residential dwelling lots in addition to the existing Arrington home may be constructed anywhere in that portion of Parcel C identified as "Future Home Sites," and that such residential lots may connect to the Town's public utility systems upon extension of sewer and water lines to the lots and payment of standard connection fees and charges therefor. The remainder of Parcel C shall be subject to a deed restriction that the remainder of the said Parcel shall be non-common open space pursuant to the Fauquier County Zoning Ordinance.

SECTION 4. WAIVER OF ANNEXATION AND BOUNDARY ADJUSTMENT RIGHTS

4.1. **Waiver of Town Annexation and Boundary Adjustment Rights.** The Town and the County agree that for a period of ____ years following the effective date of the Annexation (the "Waiver Period"), the Town waives all its statutory rights, pursuant to Chapter 31 (§ 15.2-3100 *et seq.*), Chapter 32 (§ 15.2-3200 *et seq.*), and Chapter 34 (§ 15.2-3400 *et seq.*) of Title 15.2 of the Code, and any successor or similar provisions, to annex or otherwise incorporate into its boundaries any non-commercial County territory. The Town will not initiate or institute any proceeding to annex such territory of the County or otherwise to adjust its boundaries to incorporate such territory of the County. This waiver is applicable to any

annexation of non-commercial County territory, including an annexation opposed by the County and an annexation initiated with the agreement of the Town and the County during the Waiver Period. It shall also be applicable to any boundary line adjustment or other relocation or change of Town boundaries, even though such a change is agreed upon by future governing bodies of the Town and County during the Waiver Period. It is the intent of the Town and the County that, during the Waiver Period, there shall be no annexation or other change of Town boundaries that incorporates any non-commercial County territory.

4.2. Waiver of County Annexation and Boundary Adjustment Rights. The Town and the County agree that, during the Waiver Period, the County waives all its statutory rights, pursuant to Chapter 31 (§ 15.2-3100 *et seq.*), Chapter 32 (§ 15.2-3200 *et seq.*), and Chapter 34 (§ 15.2-3400 *et seq.*) of Title 15.2 of the Code, and any successor or similar provisions, to petition for the annexation of non-commercial County territory to the Town or otherwise to petition for the incorporation any non-commercial County territory into the Town, and the County will not initiate or institute any proceeding to annex such territory to the Town or otherwise to adjust the Town's boundaries by incorporating such territory of the County. This waiver is applicable to any annexation of non-commercial County territory, including an annexation opposed by the Town and an annexation initiated with the agreement of the Town and the County during the Waiver Period. It shall also be applicable to any boundary line adjustment or other relocation or change of the Town boundaries, even though agreed upon by future governing bodies of the Town and County during the Waiver Period. It is the intent of the Town and the County that, during the Waiver Period, there shall be no annexation or other change of Town boundaries that incorporates any non-commercial County territory.

4.3. **Citizen-initiated Annexation.** In the event annexation proceedings for any non-commercial County territory are instituted during the Waiver Period by property owners or qualified voters pursuant to section 15.2-3203 of the Code, or any successor or similar provision, the Town agrees that, immediately following the institution of the proceeding before the Commission on Local Government, it will adopt an ordinance rejecting the annexation, and the Commission shall dismiss the annexation request. If the Code is amended to eliminate a Commission review, the Town will adopt such an ordinance immediately following the institution of the court proceeding, and the court shall dismiss the annexation petition. The County agrees that it will likewise oppose any such annexation proceeding for any non-commercial County territory instituted by property owners or qualified owners during the Waiver Period.

SECTION 5. COMMISSION AND SPECIAL COURT APPROVAL

5.1. **Commission on Local Government Review.** The Town and the County agree to initiate promptly the steps necessary and required by Title 15.2, Chapter 34 of the Code to obtain review of this Agreement by the Commission.

5.2. **Special Court Approval.** Following the issuance of the report of findings and recommendations by the Commission, the Town and the County agree that they will take all steps necessary and will submit this Agreement in its present form to a Special Court for affirmation and validation and to give it full force and effect, as required by Title 15.2, Chapter 34 of the Code.

5.3. **Termination for Failure to Affirm, Validate, and Give Full Force and Effect to This Agreement.** The Parties agree that if this Agreement is not affirmed, validated, and

given full force and effect by the Special Court without modification, this Agreement shall immediately terminate. However, the Parties may waive termination by mutually agreeing to recommend modifications by the Special Court.

SECTION 6. AUTHORITY.

The Town has authorized the execution and implementation of this Agreement by resolution of the Town Council, a copy of which is attached hereto as **Exhibit F**. The County has authorized its execution and implementation of this Agreement by resolution of its Board, a copy of which is attached hereto as **Exhibit G**.

SECTION 7. FURTHER REQUIREMENTS.

Each Party agrees to perform such other and further requirements as may be necessary to effectuate this Agreement and the terms and conditions hereof.

SECTION 8. COSTS.

The Parties understand and agree that all reasonable costs associated with this Agreement shall be borne by Centex.

SECTION 9. VOTING RIGHTS ACT APPROVAL.

The Parties agree to jointly pursue United States Justice Department approval of the Town and County boundary change pursuant to § 5 of the Voting Rights Act of 1965, as amended (42 U.S.C. § 1973).

SECTION 10. MISCELLANEOUS PROVISIONS

10.1. **Binding Effect.** This Agreement contains the final and entire agreement between the Town and the County with respect to this boundary adjustment matter hereof and is intended to be an integration of all prior understandings. It shall be binding upon and inure to the benefit

to Centex, the Town, and the County, and each of the future governing bodies of the Town and the County, and upon any heirs, successors, or assigns to or of any Party.

10.2. **Amendments.** This Agreement may be amended, modified, or supplemented in whole or in part, by mutual agreement of the Town and the County, prior to affirmation, by a written document of equal formality and dignity, duly executed by the authorized representatives of the Town and the County.

10.3. **Enforceability.** This Agreement shall be enforceable only by the Special Court affirming, validating, and giving full force and effect to this Agreement or by a successor Special Court appointed pursuant to Title 15.2, Chapter 30 of the Code, pursuant to a declaratory judgment action initiated by any of the Parties hereto to secure the performance of any provisions, covenants, conditions and terms contained in this Agreement or the Order affirming, validating, and giving full force and effect to this Agreement.

10.4. **Standing.** The Parties agree that each shall and does have standing to enforce any of the provisions, covenants, conditions, and terms of this Agreement.

IN CONSIDERATION of the foregoing, the authorized representatives of the Town and the County have executed this Agreement in duplicate as of the date and year first herein written.

TOWN OF WARRENTON

Kenneth McLawhon
Town Manager

FAUQUIER COUNTY, VIRGINIA

Chairman, Board of Supervisors

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APPENDIX A

CONDITIONS GOVERNING LAND USE ON THE ANNEXED AREA

The Parties hereby agree that the use and development of the Annexation Area (the "Property"), shall be in strict conformance with the following conditions. The headings set forth below have been prepared for convenience or reference only and shall not control or affect the meaning or be taken as an interpretation of any provision of these conditions. The improvements agreed to herein shall be provided at the time of development of that portion of the Property adjacent to or including the improvement or other requirement, unless otherwise specified herein. The term "Owner" as referenced herein shall include within its meaning the present and all future owners, heirs, assigns and successors in interest to the record Owner at the effective date of the Voluntary Settlement Agreement to which these conditions are appended. When used herein, the "Development CDP" shall refer to the CDP entitled "Conceptual Development CDP, Arrington Property" dated \, (the "CDP").

1. LAND USE:

- 1.1. Residential development on the Property shall not exceed 298 single family detached residential units in the locations generally depicted on the CDP.
- 1.2. Development of the Property shall be in substantial conformity with the CDP, though reasonable adjustments in road locations, lot lines, lot widths and depths, utility lines, and other features depicted on the CDP may be made at the time of site or subdivision plan approval.
- 1.3. Single family detached lot sizes shall be a combination of 55-feet wide, 60-feet-wide or 70-feet wide and shall be developed as clustered lots.
- 1.4. If required by the Town of Warrenton Zoning Ordinance, the Applicant shall apply for a Special Use Permit for an R-10 cluster subdivision.

2. ARCHITECTURAL DESIGN

- 2.1 The architectural design shall be in substantial conformance with the elevations attached hereto and incorporated herein as Exhibit A.

3. CONSTRUCTION OF AGE-RESTRICTED UNITS

- 3.1. Except to the extent otherwise prohibited by the Virginia Fair Housing Law, the Federal Fair Housing Amendments Act, or other applicable federal, state, or local legal requirements, all dwelling units within the development shall consist of age-restricted housing, and shall be restricted to "housing for older persons" as defined in Va. Code Ann. §

36-96.7, as that section may be amended, or a surviving spouse not so qualifying.

- 3.2. All other residents of any such dwelling must reside with a person who is 55 years of age or older, and must be a spouse, a cohabitant, an occupant's child eighteen years of age or older, or provide primary physical or economic support to the person who is 55 years of age or older. Notwithstanding this limitation, a person hired to provide live-in, long term or terminal health care to a person who is 55 years of age or older for compensation may also occupy a dwelling during any time such person is actually providing such care.
- 3.3. Guests under the age of 55 are permitted for periods not to exceed sixty days total for each such guest in any calendar year.
- 3.4. If title to any lot or unit shall become vested in any person under the age of 55 by reason of descent, distribution, foreclosure or operation of law, the age restriction covenant shall not work a forfeiture or reversion of title, but rather, such person thus taking title shall not be permitted to reside in such lot or unit until he or she shall have attained the age of 55 or otherwise satisfies the requirements as set forth herein. Notwithstanding, a surviving spouse shall be allowed to continue to occupy a dwelling unit without regard to age.
- 3.5. The restriction provided for herein shall also be in the form of restrictive covenants on the property, and the Homeowners' Association created hereunder shall be assigned responsibility for the enforcement and administration of the said covenant.

4. WATER AND SEWER

- 4.1 The Property shall be connected to public water and sewer systems at the Applicant's expense.
- 4.2 The Applicant shall complete an Infiltration and Inflow Study prior to issuance of the first building permit.

5. CREATION OF HOMEOWNERS' ASSOCIATION:

- 5.1 One or more homeowners' association ("HOA") shall be created and shall be made responsible for the maintenance and repair of the common areas, including common open space which may be established in accordance with the requirements of the Town Zoning Ordinance or these conditions. The HOA shall be granted such other responsibilities, duties, and powers as are customary for such

associations, or as may be required to effect the purposes for which such HOA is created. Such HOA shall also be granted sufficient powers as may be necessary, by regular or special dues or assessment, to raise revenues sufficient to perform the duties assigned hereby, or by the documents creating the Association.

- 5.2 In addition to any other duties and responsibilities as may be assigned to it, the HOA shall have title to and responsibility for (i) common open space areas not dedicated to public use in accordance with these conditions and (ii) common buffer areas located outside of residential lots. It shall also have (iii) responsibility for the perpetual maintenance of any entrance feature (subdivision) signs, street, and perimeter or road buffers located within any easements for those purposes to be granted to the HOA.

6. MONETARY CONTRIBUTION

- 6.1 The Applicant shall contribute the sum of \$73,825.50 per dwelling unit to the Town Council for funding of the Town Recreation Center, cultural resources, or other such use to be determined in the Council's sole discretion. Such funds shall be paid in one lump sum payment upon approval of the final subdivision plan.

7. FIRE AND RESCUE

- 7.1 The Applicant shall contribute to the Town Council for fire and rescue purposes in the amount of \$100.00 per residential single-family detached unit, payable upon the issuance of a building permit for each such unit.

8. TRANSPORTATION

- 8.1 Access to the development shall be from Route 17/29.
- 8.2 The Applicant shall reserve right-of-way for the future construction of the Route 15/17/29 Bypass on the southeastern portion of the Property in the general location as depicted on the CDP. There shall be no development within this reservation area.

9. OFFSITE, NON-COMMON OPEN SPACE EASEMENT

- 9.1 The Applicant shall grant a non-common open space easement (the "Deed of Easement") to the Board of Supervisors of Fauquier County for an approximately 100 acre portion of the property north of Lovers Lane and south of the project boundary, as shown on the CDP (the

“Conservation Area”). Within the Conservation Area, there shall be no more than one residential dwelling.

- 9.2 The grant of such easement shall be contingent upon approval of this Voluntary Settlement Agreement, and shall be recorded upon final subdivision approval of the Property into 298 lots. The Deed of Easement shall be similar in form and content to the draft easement attached hereto as Attachment B and shall be recorded among the land records of Fauquier County.

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APPENDIX B
DESIGN GUIDELINES

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